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Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 722.

UTAH POWER & LIGHT COMPANY, A CORPORATION,
Appellant,

v.

EMMITT PFOST, COMMISSIONER OF LAW ENFORCEMENT OF THE STATE OF IDAHO, AND FRED J. BABCOCK, ATTORNEY GENERAL OF THE STATE OF IDAHO,
Respondents.

STATEMENT AS TO JURISDICTION ON APPEAL.

JOHN F. MacLANE,
Solicitor for Appellant.

SIMPSON THACHER & BARTLETT,
120 Broadway,
New York, N. Y.
Of Counsel.

IN THE

Supreme Court of the United States,

OCTOBER TERM 1931.

No. 722

UTAH POWER & LIGHT COMPANY, a corporation,
Appellant,

AGAINST

EMMITT PFOST, Commissioner of Law Enforcement of the State of Idaho, and FRED J. BABCOCK, Attorney General of the State of Idaho,
Respondents.

STATEMENT AS TO JURISDICTION ON APPEAL.

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal, and in compliance with Rule 12 of this Court, respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

This appeal is from a final decree of a special statutory court constituted under Section 380, Title 28, U. S. C. A. (Section 266 of the Judicial Code as amended) dissolving an interlocutory injunction theretofore issued by said court and denying a permanent injunction, in a suit to restrain

the enforcement of a statute of a state upon the ground of the unconstitutionality of such statute. This direct appeal to this Court therefore is taken and lies under the express provisions of Section 345, United States Code Annotated, Title 28 (Judicial Code, Section 238, as amended) which authorizes direct review by the Supreme Court of a final decree of a district court as provided in Section 380 of said Title 28, and under that clause of said Section 380 of said Title 28 (Judicial Code, Section 266, as amended) which provides that "a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was dated February 8, 1932 and filed on the 15th day of February, 1932 (R. 146-7).[1]

The application for appeal was filed on the 17th day of February, 1932 (R. 280).

C.

Nature of Case and Ruling Below.

Appellant filed its Bill of Complaint in the District Court of the United States, District of Idaho on June 16, 1931, by which it sought an interlocutory and permanent injunction restraining the respondents from enforcing a certain Act passed by the 1931 Extraordinary Session of the Legisla-

[1] All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the United States District Court for the District of Idaho and on file with the Clerk of this Court. The record has not yet been printed.

ture of the State of Idaho. This Act provides for the payment of a tax of one-half mill per kilowatt hour upon the "generation, manufacture or production of electricity and electrical energy in the State of Idaho" (R. 16-19). It further provides that electrical energy used to pump water for irrigation purposes on lands in Idaho is exempt from the Act, but the full amount of the tax which would have been due from the producer of electrical energy, if such exemption had not been made, shall be credited by the producer on the power bill of the consumer (R. 16-19). It requires the payment of the tax monthly beginning July 15, 1931, and provides that if the tax is not paid in accordance with the terms of the Act, the amount owing shall draw interest at the rate of ten per cent. per annum, and that the producer of such electrical energy shall be liable for three times the amount of the tax, and the defendants herein, who are charged with the enforcement of the Act, may institute suit to enjoin the producer from further continuing to produce electricity (R. 16-19).

The appellant, which in addition to similar business in Idaho, generates and transmits electric power and energy in and through Idaho to Utah for distribution and use in the latter state, alleges in its Bill of Complaint that said Act is unconstitutional (1) because it is in conflict with Article 1, Section 8, Clause 3 of the Constitution of the United States in that it imposes a direct burden on interstate commerce engaged in by the appellant; (2) because the provisions for the payment of an amount equal to the tax by credit on the power bill of irrigation consumers of electric energy takes appellant's property without due process of law, and denies to it equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States; (3) because the act in various provisions is so ambiguous that it cannot be enforced except by purely arbitrary construction, likewise in violation of the Fourteenth Amendment; (4) because of other defects in the Act under the constitution of Idaho such as that the subject is not properly expressed in the title (R. 7; 10-13).

The appellant further alleges in its Bill the usual jurisdictional averments, and that it has no plain, speedy or complete remedy at law, and will suffer irreparable injury and be subjected to a multiplicity of suits for the collection of taxes monthly, and be subjected to unreasonable and excessive penalties if it refuses to pay the tax, and attempts to litigate the constitutionality of said Act (R. 13). There is no provision in said Act or in the general statutes of Idaho for the recovery of any taxes paid if said Act is held to be unconstitutional, and reimbursement of any money so paid could only be had by a subsequent act of the Legislature of said State (R. 13, 49).

When the Bill was filed, an application for an interlocutory injunction was made (R. 20-22). The District Judge for Idaho (Judge Cavanah) called to his assistance Circuit Judge William H. Sawtelle, and District Judge J. Stanley Webster of the District of Washington. Notice of the application was duly given and service made upon the Governor and Attorney General of the State of Idaho and the other defendant more than five days before the hearing (R. 24-26). After the hearing the Interlocutory Injunction was granted (R. 32, 51-53). The defendants appeared by Motion to Dismiss (R. 27-31), which was denied (R. 50), and later by answer (R. 56-79). The cause proceeded before the three judges to final hearing. Evidence was introduced (R. 150-279). Opinion on the merits adverse to appellant was rendered by the three judges December 30, 1931 (R. 80-89). Findings of Fact and Conclusions of Law were made and entered (R. 128-145). Final decree was entered accordingly on February 15, 1932, dismissing the plaintiff's Bill of Complaint, denying a permanent injunction, and dissolving the interlocutory injunction theretofore issued (R. 146-147). The temporary injunction was continued in force for thirty days to permit appeal and supersedeas (R. 148-149). Petition for appeal, assignment of errors and prayer for reversal were filed on February 17, 1932 (R. 280, 281-301). Said petition was allowed on said day (R. 302-303) and citation was thereupon issued and served (R. 306,

307), A bond for costs and supersedeas was given on the same day (R. 304-5). The transcript of record was filed and the case docketed in this court on February 23, 1932. This appeal is from such final decree.

D.

Cases Believed to Sustain Jurisdiction.

The jurisdiction of this Court on this appeal is within the express provisions of Sections 345 and 380 United States Code Annotated, Title 28, hereinabove referred to, and is sustained by the following decisions of this Court:

Clark v. *Poor*, 274 U. S. 554;
Interstate Busses Corporation v. *Blodgett*, 276 U. S. 245;
Herkness v. *Irion*, 278 U. S. 92.

Jurisdiction in a case substantially similar to this case, and involving a similar South Carolina Statute (*S. Carolina Power Co.* v. *So. Car. Tax Com.*, No. 542, Oct. Term 1931) was assumed by this Court on February 23, 1932.

All of which is respectfully submitted.

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